

JOHNNIE FINNEGAN
DON E. GORDON
CARL HOLDER

IBLA 80-148

Decided May 29, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, returning notices of location for certain mining claims and declaring those claims abandoned.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Assessment Work

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM

evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

APPEARANCES: Johnnie Finnegan, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Johnnie Finnegan appeals the decision of the Utah State Office, Bureau of Land Management (BLM), dated November 14, 1979, rejecting for purposes of recordation notices of location and affidavits of assessment work for the Sunset 1-20, Happy 1-20, Spot 1-14, Strike 1-14, Star 1-14, Wonder 1-23, Dawn 1-22, W. R. 1-10, Carla 1-11, Tam 1-20, Rod 1-24, R. A. 1-18, Pedro 1-12, Zebra 1-16, Delta 1-11, and Best 1-15 lode mining claims.

The decision stated that BLM did not receive appellants' filings until October 24, 1979, which was after the statutory filing period which ended on October 22, 1979. BLM indicates that since appellants did not comply with the filing period, the claims must be declared abandoned and void under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and pertinent regulations.

In their statement of reasons, appellants argue that the post office was negligent in failing to timely deliver the notices. They state that the postal clerk assured them that the package, stamped "priority mail," mailed on October 19, 1979, in Grand Junction, Colorado, would reach the BLM office in Salt Lake City, Utah, by October 22, 1979. They enclose a copy of a letter from the delivery and collection manager of the Salt Lake City post office stating, "Our conclusion is that if the mail met schedule all along the line it should have been delivered." They also note that the cost of relocating and recording the claims will be approximately \$1,100 and argue that it would be unfair for them to have to borrow the money because of the post office's delay.

[1, 2] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location and related documents for the claim in the BLM office designated by the Secretary of the Interior within the 3-year

period following October 21, 1976. Section 314 also provides that failure to timely file such records shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulations, 43 CFR 3833.1-2(a) and 3833.2-1(a), read as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed. * * *

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§ 3833.2 Evidence of assessment work -- notice of intention to hold a claim or site.

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§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Examination of the case record reveals that the certified mail receipt notes that delivery of appellants' package occurred on October 23, 1979, rather than October 24 as stated in the BLM decision. However, this was still untimely. Under FLPMA and the applicable regulations, the requirements for recordation are clear. Failure

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

to timely file the required notices of location constitutes abandonment of the claims. This Board has no authority to excuse a late filing.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Assoc., 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

As appellants recognize, they may relocate the claims if for locatable minerals, and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

